FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: DIGITEK PRODUCT LIABILITY LITIGATION

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

MYLAN DEFENDANTS' MOTION TO DISMISS COUNTS ONE, TWO AND THREE OF THE MASTER CONSOLIDATED COMPLAINT FOR INDIVIDUALS

Defendants Mylan Inc., Mylan Pharmaceuticals Inc., Mylan Bertek Pharmaceuticals Inc., and UDL Laboratories, Inc. (collectively, "Mylan Defendants") move the Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the following counts of the Master Complaint for failure to state claims upon which relief can be granted:

1. Plaintiffs' claim for failure-to-warn (Count One) should be dismissed against Mylan Defendants for two reasons. First, Plaintiffs have failed to allege facts sufficient to plausibly establish that Mylan Defendants, as distributors of Digitek®, knew or had reason to know of the existence of a manufacturing defect prior to the drug's recall. Second, because no instructions or warnings could have made Digitek® containing "inconsistent or excessive doses of Digoxin," safe for consumer use, Plaintiffs have failed to adequately allege the existence of a warning defect.

2. Plaintiffs' claims against Mylan Defendants for manufacturing defect (Count Two) and design defect (Count Three) should be dismissed because product distributors that did not participate in a product's design or manufacture cannot be held liable for defects in the product.

The grounds for this motion are more fully set forth in the attached Memorandum in Support, which is incorporated herein as if fully rewritten.

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2009, I electronically filed the foregoing "Mylan Defendants' Motion to Dismiss Counts One, Two and Three of the Master Consolidated Complaint for Individuals" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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